

(e) *Application form.* A savings and loan holding company making application to acquire a qualified stock issuance pursuant to this § 574.8, shall use Form H-(e)2, as provided in § 574.6(a)(3).

**§ 574.9 Additions of directors and employment of senior executive officers of savings associations and savings and loan holding companies.**

(a) *Definitions.* As used in this section and in the forms under this section, the following definitions apply, unless the context otherwise requires:

(1) *Director.* The term *director* means any individual who serves on the board of directors of a savings association or savings and loan holding company, except that such term does not include an advisory director who was not elected by the shareholders of the savings association or savings and loan holding company and is not authorized to vote on any matters before the board of directors, but provides only general policy advice to the board of directors. However, the term does include an advisory director who performs the same functions as a director or who exercises significant influence over, or participates in, major policy-making decisions of the board of directors of a savings association or savings and loan holding company.

(2) *Senior Executive Officer.* The term *senior executive officer* means the chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer and any other individual identified by the OTS to a savings association or a savings and loan holding company who exercises significant influence over, or participates in, major policy decisions of a savings association or a savings and loan holding company without regard to title, salary, or compensation. The term also includes employees of entities retained by a savings association or savings and loan holding company to perform such functions in lieu of directly hiring the individuals, who are similarly identified by the OTS to the savings association or savings and loan holding company.

(3) *Complete Notice.* The term *complete notice* means a notice that provides all the information requested in paragraph

(d)(2) of this section, including legible fingerprints, complete explanations where material issues arise regarding the competence, experience, character, or integrity of proposed directors or senior executive officers, and any additional information that the OTS may request following a determination that the original submission of the notice was not complete.

(4) *Complete Notice Date.* The term *complete notice date* means the date on which the OTS has received a complete notice.

(5) *Troubled Condition.* The term *troubled condition* means:

(i) Any savings association that:

(A) Has a composite rating of 4 or 5, as defined in § 516.3(c) of this chapter;

(B) Is subject to a capital directive, a cease and desist order, a consent order, a formal written agreement, or a prompt corrective action directive, relating to the safety and soundness or financial viability of the savings association, unless otherwise informed in writing by the OTS; or

(C) Is informed in writing by the OTS that it has been designated in *troubled condition* based on the current financial statements, report of examination, or limited scope review of the savings association; or

(ii) Any savings and loan holding company that:

(A) Is subject to a cease and desist order, a consent order, a prompt corrective action directive, or a formal written agreement, relating to the safety and soundness or financial viability of its savings association subsidiary, unless otherwise informed in writing by the OTS;

(B) Is informed in writing by the OTS that it has been designated as being in *troubled condition* based on the current financial statements, report of examination, limited scope review, periodic filings, or other filings of the holding company or its subsidiary savings association; or

(C) Is rated unsatisfactory or is informed in writing by the OTS that it otherwise has an adverse effect on its subsidiary savings association.

(b) *Prior Notice.* (1) A savings association or savings and loan holding company described in paragraph (c) of this

section shall notify the OTS of the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer of such savings association or savings and loan holding company at least 30 days before such addition or employment becomes effective.

(2) A savings association or savings and loan holding company described in paragraph (c) of this section may not add any individual to the board of directors or employ any individual as a senior executive officer if the OTS issues a notice of disapproval of such addition or employment before the end of the 30-day period beginning on the complete notice date.

(c) *Savings associations and holding companies covered.* The requirements of paragraph (b) of this section shall apply:

(1) In the case of a savings association, a savings association that has been chartered less than two years, excluding a savings association that has operated as an insured depository institution for at least two years as determined by the OTS upon written request;

(2) In the case of a savings association or savings and loan holding company, a savings association or savings and loan holding company, respectively, that within the two years preceding the proposed addition or employment, has directly or indirectly undergone a change in control subject to the Change in Bank Control Act, 12 U.S.C. 1817(j), or the Savings and Loan Holding Company Act, 12 U.S.C. 1467a, and the regulations promulgated thereunder at 12 CFR part 574, or the Reports of Change in Control of Mutual Savings Associations, 12 CFR 563.181, excluding transactions involving existing approved control parties and acquisitions of control that do not result in substantive changes of control as determined by the OTS upon written request; or

(3) In the case of a savings association, a savings association that is not in compliance with any of its applicable regulatory capital requirements established pursuant to 12 CFR part 567, or a savings association or the savings and loan holding company that is oth-

erwise in troubled condition, as defined in this section.

(d) *Procedures—(1) Filing Requirements.* (i) Except where otherwise provided in this section, notices shall be filed in accordance with the filing procedures set forth at 12 CFR 516.1. Except as noted in paragraph (d)(5) of this section, the appropriate OTS form(s) shall be used for all notices. A notice is required to contain all the information set forth in paragraph (d)(2) of this section. A notice shall comply with all applicable regulations and guidelines. The OTS will provide written notification to the filer of a notice of the complete notice date when the OTS has received a complete notice. The 30-day review period begins on the complete notice date.

(ii) The notice shall be submitted by the savings association or savings and loan holding company that proposes a particular individual to serve as a director or senior executive officer; each individual on whose behalf a notice is filed must certify that, to the best of his or her knowledge and belief, all the information filed is true, correct, complete, and made in good faith; and a senior official of the savings association or savings and loan holding company must certify that information pertaining to that individual has been reviewed by the filing savings association or savings and loan holding company and that the information submitted is consistent with information obtained by the savings association or savings and loan holding company. Where the interests of the individual and the savings association or savings and loan holding company may be at odds, such as in the case of a proxy contest, the notice may be submitted to the OTS directly by the individual. In such case, the individual must certify that he or she provided the savings association or savings and loan holding company all non-confidential information contained in the notice and likewise certify that, to the best of his or her knowledge and belief, all of the information filed is true, correct, complete, and made in good faith. If a notice for such an individual has not been submitted to the OTS prior to the election, the individual and the savings association or savings and loan holding

company have the alternative of relying on the automatically granted waiver under paragraph (d)(8)(ii) of this section.

(2) *Content of Notice.* A notice must contain the identity, personal history, business background, and experience of each person whose designation as a director or senior executive officer is subject to this section. The notice must include:

(i) A description of his or her material business activities and affiliations during the 5 years preceding the date of the notice;

(ii) A description of any material pending legal or administrative proceedings in which he or she is a party;

(iii) Any criminal indictment or conviction by a State or Federal court; and

(iv) Legible fingerprints of such person, *except that* fingerprints are not required with respect to any person who, within the three years immediately preceding the date of the present notice, has been subject to a notice filed with the OTS pursuant to 12 U.S.C. 1831i or this section and has previously submitted fingerprints.

(3) *Requests for Additional Information.*

(i) If the original submission of a notice is considered not complete, the OTS will provide written notification to the filer of the notice that the notice is not complete, set forth the reasons for this determination, and may request that the filer of the notice submit additional information.

(ii) Following receipt of a complete notice, the OTS may make a written request, when feasible, for additional information and may specify a time period during which such information must be provided.

(4) *Suspension of the 30-day Review Period.* (i) When the OTS makes a request for additional information under paragraph (d)(3)(ii) of this section, the savings association or savings and loan holding company must provide the information within the time period specified by the OTS or the savings association or savings and loan holding company may request in writing that the OTS suspend processing of the notice. To enable the savings association or savings and loan holding company to provide such information, the OTS may

suspend processing for a period of up to 60 days from the date of the request. If the savings association or savings and loan holding company has not provided the requested information within the latest applicable time period specified by the OTS:

(A) The OTS may make its decision based on the information then before it and may draw any reasonable inferences from the savings association or savings and loan holding company's failure to provide the requested information; or

(B) The OTS may treat the notice as withdrawn and inform the savings association or savings and loan holding company in writing.

(ii) If the OTS does not receive a report that it requested from another government agency concerning an individual proposed by the savings association or savings and loan holding company within the 30-day review period, the OTS may request that the savings association or savings and loan holding company and the proposed individual certify, by signing a letter provided by the OTS, that the individual will not assume the proposed position until the OTS has received and reviewed the report and has issued a notice of intent not to disapprove. In making this request, the OTS will notify the savings association or savings and loan holding company and the individual of the basis for its unwillingness to issue a notice of intent not to disapprove before the end of the 30-day review period without receipt and review of the report. If either the savings association or savings and loan holding company or the individual do not sign the certification before the end of the 30-day review period, the OTS will decide whether to issue a notice of disapproval based on the information then before it.

(5) *Special Notice Rule for Multi-Tiered Savings and Loan Holding Companies.* (i)

With respect to multi-tiered savings and loan holding companies, the notification required by paragraph (d)(1) of this section will only be required for the savings and loan holding company that directly controls a savings association; provided that if such company is without substantial assets other than the ownership of the subsidiary

savings association, then the company that directly controls such savings and loan holding company shall also be subject to the notification requirement of paragraph (d)(1) of this section; further provided that, in the event the first indirect savings and loan holding company also is without substantial assets other than the ownership of the direct savings and loan holding company, then each company that directly and/or indirectly holds the indirect savings and loan holding company shall be subject to the notification requirement of paragraph (d)(1) of this section until a savings and loan holding company in the line of ownership that has substantial assets other than the indirect ownership of the savings association is subject to the notification requirement of paragraph (d)(1) of this section.

(ii) Other savings and loan holding companies in a multi-tiered ownership structure described in paragraph (d)(5)(i) of this section may satisfy the notification requirement of paragraph (d)(1) of this section by submitting:

(A) An executed copy of the OTS's RB 20 certification regarding the subject individual's involvement in certain types of legal proceedings; and

(B) A certification from the individual and the highest-ranking official of the company, certifying that the appointment of the individual as a senior executive officer would not raise grounds for disapproval of the notice under 12 U.S.C. 1831i or this section.

(iii) Notwithstanding the provisions of paragraphs (d)(5)(i) and (ii) of this section, the OTS may require submission of a complete notice under this section for any savings and loan holding company in a multi-tiered ownership structure.

(6) *Notice of Disapproval.* The OTS may disapprove an individual proposed as a member of the board of directors or as a senior executive officer of a savings association or savings and loan holding company upon determining that, on the basis of the individual's competence, experience, character, or integrity, it would not be in the best interests of the depositors of the savings association or savings and loan holding company or of the public to permit the individual to be employed

by, or associated with, the savings association or savings and loan holding company. The OTS will send a notice of disapproval to both the savings association or savings and loan holding company and the disapproved individual. The notice of disapproval will contain a statement of the basis for disapproval.

(7) *Notice of Intent Not to Disapprove.* An individual proposed as a member of the board of directors or as a senior executive officer of a savings association or savings and loan holding company may begin service before the expiration of the 30-day review period if the OTS notifies the savings association or savings and loan holding company of an intention not to disapprove the proposed director or senior executive officer.

(8) *Waiver of Prior Notice.* (i) A savings association or savings and loan holding company may file with the OTS a written request for a waiver of the prior notice requirement. The OTS may waive the prior notice requirement but not the filing of a notice under this section, if the OTS finds that waiver would be in the best interest of the savings association or the savings and loan holding company, would be in the public interest, or that other extraordinary circumstances justify waiving the prior notice requirement of this provision. The length of any waiver depends on the circumstances in each individual case. If a waiver is granted, the required notice shall be filed within the time period specified in the waiver and the proposed individual may assume the position on an interim basis until the individual and the savings association or savings and loan holding company receive a notice of disapproval. If the required notice is not filed within the time period specified in the waiver, the proposed individual must immediately resign his or her position. The individual can assume the position on a permanent basis only after the savings association or savings and loan holding company receives a notice of intent not to disapprove or after the 30-day review period elapses. A waiver shall not affect the authority of the OTS to subsequently issue a notice of disapproval

within 30 days of the expiration of such waiver.

(ii) In the case of the election at a meeting of the shareholders of a new director not proposed by the board of directors of the savings association or savings and loan holding company, if the individual has not submitted a notice directly to OTS under paragraph (d)(1)(ii) of this section, a waiver is automatically granted and the proposed individual may begin service as a director. However, under these circumstances, the savings association or savings and loan holding company must file the required notice with the OTS as soon as practical but not later than seven days from the date the individual is notified of the election to the board of directors.

(9) *Commencement of Service.* An individual proposed as a member of the board of directors or as a senior executive officer may assume the office following the end of the 30-day review period, which begins on the complete notice date, unless:

(i) The OTS issues a notice of disapproval during the 30-day review period;

(ii) The OTS suspends the 30-day review period pursuant to paragraph (d)(4)(i) of this section;

(iii) The savings association or savings and loan holding company and the individual certify, pursuant to paragraph (d)(4)(ii) of this section, that the individual will not assume the proposed position; or

(iv) The savings association or savings and loan holding company does not provide additional information within the time period required by the OTS pursuant to paragraph (d)(3)(ii) of this section and the OTS treats the notice as withdrawn.

[58 FR 45427, Aug. 30, 1993; 58 FR 52140, Oct. 6, 1993, as amended at 62 FR 3781, Jan. 27, 1997]

#### **§ 574.100 Rebuttal of control agreement.**

##### AGREEMENT

##### Rebuttal of Rebuttable Determination Of Control Under Part 574

##### I. WHEREAS

A. [ ] is the owner of [ ] shares (the "Shares") of the [ ] stock (the "Stock") of

[name and address of association], which Shares represent [ ] percent of a class of "voting stock" of [ ] as defined under the Acquisition of Control Regulations ("Regulations") of the Office of Thrift Supervision ("Office"), 12 CFR part 574 ("Voting Stock");

B. [ ] is a "savings association" within the meaning of the Regulations;

C. [ ] seeks to acquire additional shares of stock of [ ] ("Additional Shares"), such that [ ]'s ownership thereof will exceed 10 percent of a class of Voting Stock but will not exceed 25 percent of a class of Voting Stock of [ ]; [and/or] [ ] seeks to [ ], which would constitute the acquisition of a "control factor" as defined in the Regulations ("Control Factor");

D. [ ] does not seek to acquire the [Additional Shares or Control Factor] for the purpose or effect of changing the control of [ ] or in connection with or as a participant in any transaction having such purpose or effect;

E. The Regulations require a company or a person who intends to hold 10 percent or more but not in excess of 25 percent of any class of Voting Stock of a savings association or holding company thereof and that also would possess any of the Control Factors specified in the Regulations, to file and obtain approval of an application ("Application") under the Savings and Loan Holding Company Act ("Holding Company Act"), 12 U.S.C. 1467a, or file and obtain clearance of a notice ("Notice") under the Change in Control Act ("Control Act"), 12 U.S.C. 1817(j), prior to acquiring such amount of stock and a Control Factor unless the rebuttable determination of control has been rebutted.

F. Under the Regulations, [ ] would be determined to be in control, subject to rebuttal, of [ ] upon acquisition of the [Additional Shares or Control Factor];

G. [ ] has no intention to manage or control, directly or indirectly, [ ];

H. [ ] has filed on [ ], a written statement seeking to rebut the determination of control, attached hereto and incorporated by reference herein, (this submission referred to as the "Rebuttal");

I. In order to rebut the rebuttable determination of control, [ ] agrees to offer this Agreement as evidence that the acquisition of the [Additional Shares or Control Factor] as proposed would not constitute an acquisition of control under the Regulations.

II. The Office has determined, and hereby agrees, to act favorably on the Rebuttal, and in consideration of such a determination and agreement by the Office to act favorably on the Rebuttal, [ ] and any other existing, resulting or successor entities of [ ] agree with the Office that:

A. Unless [ ] shall have filed a Notice under the Control Act, or an Application